

2014 MAR 11 AM 11:45  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES  
BY \_\_\_\_\_

PATEL & ALMEIDA, P.C.  
ALEX D. PATEL  
(State Bar No. 201875)  
alex@patelalmeida.com  
PAULO A. DE ALMEIDA  
(State Bar No. 279168)  
paulo@patelalmeida.com  
16830 Ventura Blvd., Suite 360  
Encino, CA 91436  
Telephone: 818.380.1900  
Fax: 818.380.1908

Attorneys for Plaintiff,  
OLGA CURTIS

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OLGA CURTIS, an individual,

Plaintiff,

v.

SHINSACHI PHARMACEUTICAL  
INC., f/k/a SHINSACHI MEDIA INC.,  
a corporation of Canada; Seungwoo  
Shin, a Canadian individual; and DOES  
1 through 10, inclusive,

Defendants.

Case No. 2:14-CV-00591-ODW(SSx)

**FIRST AMENDED COMPLAINT  
FOR:**

- 1) DECLARATORY AND  
INJUNCTIVE RELIEF;
- 2) MISREPRESENTATION OF  
COPYRIGHT INFRINGEMENT  
UNDER THE DMCA (15. U.S.C. §  
512(f));
- 3) CANCELLATION OF FEDERAL  
TRADEMARK REGISTRATION  
(15 U.S.C. § 1119)
- 4) FEDERAL CYBERPIRACY (15  
U.S.C. § 1125(d));
- 5) TRADE LIBEL
- 6) INTENTIONAL INTERFERENCE  
WITH CONTRACT;
- 7) INTERFERENCE WITH  
PROSPECTIVE ECONOMIC  
RELATIONS

DEMAND FOR JURY TRIAL

**BY FAX**

1 Plaintiff, Olga Curtis ("Plaintiff"), by and through her undersigned counsel,  
2 states as follows for her complaint against Defendant Shinsachi Pharmaceutical,  
3 Inc., f/k/a Shinsachi Media, Inc., a corporation of Canada ("Shinsachi"); Seungwoo  
4 Shin, a Canadian individual ("Shin"); and Does 1 through 10, inclusive  
5 (collectively, "Defendants"):

### 6 **NATURE OF THE ACTION**

7 This is a declaratory judgment action seeking a determination that Plaintiff  
8 has never infringed any of the Defendants' copyrights, trademarks, or other  
9 intellectual property rights. Plaintiff also seeks damages and an injunction  
10 prohibiting Defendants from sending false claims of infringement and other  
11 wrongdoing about Plaintiff to third party Internet service providers such as eBay  
12 and Google, among others, and from publishing false and disparaging statements  
13 about Plaintiff's skin care business on the Internet. Further, Plaintiff herein seeks  
14 cancellation of Defendant Shinsachi's U.S. Trademark Registration Nos. 4290428  
15 ("TATTOONUMB"), 4321983 ("SUPERNUMB") and 4326072 ("DEEPNUMB"),  
16 all for topical anesthetic skin care products for tattoo pain relief, on the grounds that  
17 Plaintiff is the true owner of these trademarks based on her prior and superior  
18 common-law trademark rights, and alternatively on the grounds that Shinsachi has  
19 abandoned these trademarks through non-use in commerce. Last, Plaintiff seeks an  
20 order by this Court transferring ownership of three domains to Plaintiff  
21 (*www.supernumb.com*, *www.deepnumb.com*, and *www.numbfast.com*) which the  
22 Defendants acquired and have used in bad faith to divert Plaintiff's consumers to  
23 Defendants' website, *www.drnumb.com*.

24 In short, Defendants used computers in Canada to hijack Plaintiff's  
25 trademarks TATTOONUMB, SUPERNUMB, and DEEPNUMB in the U.S. by  
26 registering them at the United States Patent and Trademark Office ("USPTO").  
27 Defendants then used the registrations to prevent Plaintiff from selling her own  
28

1 products online by sending over 30 Digital Millennium Copyright Act ("DMCA")  
2 "takedown" notices containing false allegations of copyright and trademark  
3 infringement to Plaintiff's third party service vendors such eBay, Google, PayPal,  
4 and her web hosting provider, Serversea. On the basis of these false allegations of  
5 infringement, eBay removed over 140 of Plaintiff's on-line product listings for her  
6 skin care products and suspended her various user accounts; Google suspended  
7 Plaintiff's "Adwords" account used for on-line advertising; and SeaServer  
8 suspended Plaintiff's main website at *www.numbcreams.com*. Defendants' false  
9 complaints also prevented Plaintiff from lawfully purchasing and re-selling some of  
10 the Defendants' "DR NUMB" skin cream products, which Plaintiff is entitled to do  
11 under the first sale doctrine.

12 In addition to the foregoing, Defendants recently began using the domains  
13 *www.supernumb.com*, *www.deepnumb.com*, and *www.numbfast.com*—all of which  
14 correspond to Plaintiff's trademarks SUPERNUMB, DEEPNUMB, and  
15 NUMBFAST®—to publish websites containing false and disparaging statements  
16 about Plaintiff's skin care products, including blatantly false statements that  
17 Plaintiff's products are subject to an "FDA recall" when so such "recall" occurred.

18 Over a period of three years, the foregoing acts of Defendants disrupted  
19 Plaintiff's business by preventing her from advertising and selling her skin care  
20 products on the Internet and discouraging consumers from purchasing her products.  
21 Still today, Defendants continue to send false infringement notices to third party  
22 Internet service providers and publish false/disparaging statements for the purpose  
23 of interfering with Plaintiff's business. Plaintiff now seeks damages and injunctive  
24 relief prohibiting Defendants and their agents from continuing the inference.

## 25 **PARTIES**

26 1. Plaintiff is an individual with her principal place of business at 2006 S.  
27 Main St., Moscow, Idaho, United States.  
28

1           2.     On information and belief, Defendant Shinsachi is a corporation of  
2 Canada, having its principal place of business in Vancouver, British Columbia,  
3 Canada.

4           3.     On information and belief, Defendant Seungwoo Shin is an individual  
5 residing in Vancouver, British Columbia, Canada.

6           4.     Plaintiff is ignorant of the true names and capacities of the defendants  
7 sued herein as Does 1 to 10, inclusive, and therefore sues these defendants by such  
8 fictitious names. Plaintiff will amend this complaint to allege their true names and  
9 capacities when ascertained.

10          5.     Plaintiff is informed and believes, and on that basis alleges, that each  
11 of the defendants was the agent and/or employee of the remaining defendants and,  
12 at all times mentioned, acted within the course and scope of such agency and  
13 employment.

14                               **JURISDICTION AND VENUE**

15          6.     This Court has subject matter jurisdiction over Plaintiff's federal  
16 claims pursuant to the Copyright Act (17 U.S.C. §§ 101 *et seq.*), 28 U.S.C. §§ 1331,  
17 1338, and the Declaratory Judgment Act (28 U.S.C. § 2201). This Court has  
18 supplemental subject matter jurisdiction over the state law claims pursuant to 28  
19 U.S.C. § 1367(a) in that the state law claims form part of the same case or  
20 controversy as the federal claims.

21          7.     This Court has personal jurisdiction over Defendants because they  
22 conduct business in the State of California through, among other things, operating  
23 interactive websites purposefully directed at California residents, selling skin  
24 creams to California residents, and using the internet to send electronic  
25 communications containing false statements to Plaintiff's third party service  
26 vendors in California, including eBay, Google, and PayPal.

27          8.     Venue is proper in the Central District of California pursuant to 28  
28

1 U.S.C. § 1391(c) because Defendants are not residents in the United States and may  
2 be sued in any judicial district.

3 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

4 **Plaintiff's Successful Skin Care Brands**

5 9. Since at least as early as 2011, Plaintiff has invested substantial  
6 resources into marketing and selling topical anesthetic skin creams throughout the  
7 U.S. under the trademarks TATTOONUMB, SUPERNUMB, and DEEPNUMB,  
8 and NUMBFAST® (collectively, the "NUMB Marks").

9 10. Specifically, Plaintiff has used the trademark TATTOONUMB for  
10 topical anesthetics since June 25, 2011, the trademark SUPERNUMB for topical  
11 anesthetics since June 12, 2011, the trademark DEEPNUMB for topical anesthetics  
12 since June 16, 2011, and the trademark NUMBFAST for topical anesthetics since  
13 August 11, 2011.

14 11. Plaintiff's NUMB Marks have developed national and international  
15 brand recognition as identifying some of the highest quality topical anesthetics  
16 available on the market today.

17 12. The USPTO registered NUMBFAST® to Plaintiff on February 15,  
18 2014 (Registration No. 4477311).

19 13. Plaintiff has extensive common law rights in all of the NUMB Marks  
20 based her continuous use of the marks throughout the United States since the  
21 aforementioned "first use" dates.

22 14. As a result of Plaintiff's widespread and continuous use of the NUMB  
23 Marks, the marks have acquired extensive, valuable goodwill, have developed a  
24 high degree of distinctiveness, and have become well known and recognized as  
25 identifying Plaintiff's superior quality skin care creams.

26 15. Plaintiff primarily advertises and sells her topical anesthetics under the  
27 NUMB Marks on the Internet through her "listings" at the online retail and auction  
28

1 website eBay.com ("eBay").

2 16. In addition to her seller pages on eBay, Plaintiff also operates the  
3 website at *www.numbcreams.com* to promote and sell her skin creams under the  
4 NUMB Marks.

5 17. Through her sales on eBay and elsewhere on the Internet, Plaintiff has  
6 built up substantial good will as a reputable and dependable seller of topical  
7 anesthetic skin creams.

8 **Plaintiff's Lawful Sales of Defendants' DR. NUMB Products**

9 18. On information and belief, Defendants produce a topical anesthetic  
10 cream under the trademark DR. NUMB ("DR. NUMB") and sells the product  
11 through their own website at *www.drnumb.com* and through eBay.

12 19. On information and belief, Defendant Seungwoo Shin, a director of  
13 Defendant Shinsachi, registered the trademark DR. NUMB with the USPTO. The  
14 U.S. trademark registration number for DR. NUMB is 3916453. On information  
15 and belief, although there is no assignment for the DR. NUMB registration  
16 recorded at the USPTO, Shinsachi uses the mark with the permission of its director,  
17 Defendant Seungwoo Shin.

18 20. Defendant Shinsachi is a competitor of Plaintiff in the field of topical  
19 anesthetics.

20 21. On a few occasions, Plaintiff purchased DR. NUMB products directly  
21 from Defendants through the Internet and lawfully re-sold them in the United States  
22 on eBay and on her website at *www.numbcreams.com*. Plaintiff sold the DR.  
23 NUMB products along with her own products TATTOONUMB, SUPERNUMB,  
24 and DEEPNUMB.

25 22. No contract existed between Defendants and Plaintiff concerning  
26 Plaintiff's re-sale of DR. NUMB products in the United States.

23. On information and belief, when Defendants first sold the DR. NUMB products to Plaintiff which she later offered for re-sale on the Internet, Defendants did not retain ownership of those particular products. On information and belief, Plaintiff owned the DR. NUMB products once purchased from Defendants and lawfully re-sold them pursuant to the *first sale doctrine*.

### **Defendants' Wrongful Conduct**

#### **Shinsachi's Unlawful Registration of Plaintiff's Marks in the United States**

24. On information and belief, approximately one year after Plaintiff began selling her products under the NUMB Marks on eBay in June of 2011, Defendant Shin filed three trademark applications at the USPTO for the marks TATTOONUMB, SUPERNUMB, and DEEPNUMB, all for use in connection with "topical anesthetics".

25. Specifically, on February 16, 2012, Defendant Shinsachi filed the following U.S. trademark applications at the USPTO:

- 1) Serial Number 85/545,084 for the mark  
TATTOONUMB for "topical anesthetics" alleging a  
"first use" date of August 11, 2011, and a "first use in  
commerce" date of February 3, 2012;
- 2) Serial Number 85/545,073 for the mark  
SUPERNUMB for "topical anesthetics" alleging a  
"first use" date of August 11, 2011, and a "first use in  
commerce" date of February 5, 2012; and
- 3) Serial Number 85/545,054 for the mark DEEPNUMB  
for "topical anesthetics" alleging a "first use" date of  
August 11, 2011, and a "first use in commerce" date of  
February 12, 2012.



1           26.    On February 12, 2013, the USPTO issued U.S. trademark registration  
2 number 4290428 for the mark TATTOONUMB on the Supplemental Register.

3           27.    On April 16, 2012, the USPTO issued U.S. trademark registration  
4 number 4321983 for the mark SUPERNUMB on the Principal Register.

5           28.    On April 23, 2013, the USPTO issued U.S. trademark registration  
6 number 4326072 for the mark DEEPNUMB on the Supplemental Register.

7           29.    On information and belief, Defendants knew that Plaintiff was the  
8 prior user of the NUMB Marks in the United States when Defendant Shinsachi filed  
9 the three trademark applications on February 16, 2012.

10          30.    As the prior user of the NUMB Marks, Plaintiff is the owner of the  
11 marks and is entitled to federal registration, not Shinsachi.

12          31.    On information and belief, the Defendants have never used the marks  
13 TATTOONUMB, SUPERNUMB or DEEPNUMB to sell any goods of any kind in  
14 the United States. As such, Defendants never acquired any trademark rights in  
15 these marks. If Defendants ever acquired trademark rights in these marks,  
16 Defendants abandoned such rights through non-use in commerce. For these  
17 additional reasons, Defendants were never entitled to federal registration of the  
18 marks, and are not entitled to maintain such registrations for marks which are not in  
19 use.

20          32.    On information and belief, the Defendants filed the foregoing  
21 trademark applications for the purpose of preventing Plaintiff from registering her  
22 own NUMB Marks in the United States, and so that Defendants could misuse the  
23 resulting registrations to disrupt Plaintiff's business. Specifically, Defendants sent  
24 communications containing false allegations of trademark infringement to  
25 Plaintiff's third party Internet service providers, which Defendants knew were false  
26 and would result in the removal of Plaintiff's products and advertising from the  
27  
28



1 Internet. These false complaints resulted in the removal of Plaintiff's products and  
2 advertising, causing damage to Plaintiff's business.

3 Defendants' False Allegations of Infringement and Other Wrongdoing Sent to  
4 Plaintiff's Third Party Internet Service Providers

5 33. On various dates between 2011 and 2013, Defendants, directly or  
6 through an agent, submitted over 200 complaints to various third party Internet  
7 service providers, including eBay, Google, PayPal, and Plaintiff's web hosting  
8 provider, Serversea, alleging that Plaintiff had infringed on Defendants' copyrights  
9 and/or trademarks, and/or that Plaintiff had engaged in other unlawful activities.

10 34. Some of the complaints alleged infringement of the TATTOONUMB,  
11 SUPERNUMB, and DEEPNUMB trademark registrations, despite Plaintiff's  
12 superior rights in these marks. Some complaints alleged infringement of  
13 Defendants' DR. NUMB trademark, even though Plaintiff lawfully purchased and  
14 re-sold the DR. NUMB products under the first sale doctrine. Other complaints  
15 alleged copyright infringement of images and/or text owned by Defendants, without  
16 specifying any copyright registration, and without identifying the images or text  
17 allegedly used by Plaintiff. Other complaints alleged that Plaintiff had engaged in  
18 "spamming" or that Plaintiff had sold topical anesthetics in violation of government  
19 regulations concerning such products.

20 35. The allegations of infringement and other wrongdoing in the  
21 complaints are false, and Defendants knew or should have known upon submitting  
22 the complaints that the statements contained therein were false. These complaints  
23 demanded that the Internet service providers remove Plaintiff's products and  
24 advertising from the Internet. In most cases, these Internet service providers  
25 removed Plaintiff's products from the internet, thereby causing lost sales and  
26 damage to Plaintiff's business.

1           36. Specifically, on information and belief, on various dates between 2011  
2 and 2013, Defendants, directly or through an agent, submitted over 30 "Notices of  
3 Claimed Infringement" ("Notices") to eBay through eBay's Verified Rights Owner  
4 ("VeRO") program, which allows intellectual property holders to terminate on-line  
5 listings of allegedly infringing goods. On information and belief, the Notices  
6 submitted by Defendants alleged trademark and/or copyright infringement and  
7 demanded that eBay terminate Plaintiff's eBay listings of products for sale.

8           37. On information and belief, in these Notices, Defendants represented  
9 under penalty of perjury that they had a good faith belief that Plaintiff's listings  
10 infringed Defendants' trademarks and/or copyrights, and that all of the information  
11 contained in the Notices was accurate. Submission of a Notice through the VeRO  
12 program constitutes a notification of infringement under the Digital Millennium  
13 Copyright Act ("DMCA"), 17 U.S.C. § 512.

14           38. On information and belief, upon submitting the Notices, Defendants  
15 did not have a good faith belief that the products offered for sale in Plaintiff's  
16 listings infringed Defendants' copyrights and/or trademarks. All of the Notices  
17 contained false statements and misrepresentations concerning infringement. At the  
18 very least, on information and belief, upon submitting the Notices, Defendants  
19 knew or should have known the Notices contained false statements and  
20 misrepresentations concerning infringement.

21           39. The products offered for sale complained of in the Notices were either  
22 Plaintiff's own products sold under her NUMB Marks, or they were DR. NUMB  
23 products which Plaintiff lawfully purchased from Defendants and re-sold in the  
24 United States pursuant to the first sale doctrine.

25           40. Plaintiff's eBay listings complained of in the Notices did not include  
26 any of Defendants' copyrighted text or graphics.  
27  
28

1           41. Plaintiff s eBay listings complained of in the Notices did not infringe  
2 Defendants' copyrights, trademarks, or any other rights of Defendants.

3           42. Each time Defendants submitted a Notice through the VeRO program,  
4 eBay notified Plaintiff of the alleged infringement and removed the listing  
5 complained of in the Notice. In each Notice, eBay identified one of the Defendants  
6 as the intellectual property rights owner responsible for the Notice.

7           43. Plaintiff contacted Defendants by email and inquired into the reason  
8 for the termination of the eBay listings. Defendants responded in an email stating  
9 that "the selling of SuperNumb and DeepNumb must stop immediately"; that  
10 "[Plaintiff] is selling unauthorized pharmaceutical drugs" and that "Unauthorized  
11 use of [Defendants'] Dr. Numb copyrighted material by 'SuperNumb and  
12 DeepNumb' is absolutely illegal." Defendants also stated, "We believe you have  
13 wilfully infringed our rights under 17 USC Section 101 and you will be liable for  
14 statutory damages as high as \$100,000.00."

15           44. In addition to contacting the Defendants by email, Plaintiff sent  
16 various Counter Notices regarding the removed listings ("Counter-Notices") to  
17 eBay, in compliance with the VeRO program policies and with the DMCA, 17  
18 U.S.C. § 512(g)(3). The Counter-Notices explained that Plaintiff did not engage in  
19 any infringement of Defendants' intellectual property rights.

20           45. On information and belief, eBay informed Defendants of Plaintiff's  
21 Counter-Notices, explaining that eBay would allow Plaintiff's listings to be restored  
22 if eBay did not receive notice within a certain amount of time that Defendants had  
23 filed an action in federal court seeking an order to restrain Plaintiff from selling her  
24 products. Defendants did not file such an action, and therefore, eBay allowed some  
25 of the listings to be restored on the eBay site.

26           46. Even after some of Plaintiff's listings were restored by eBay, and even  
27 after Plaintiff informed Defendants that there was no infringement, Defendants  
28

1 continued to submit Notices containing false statements concerning infringement,  
2 resulting in the continued removal of Plaintiff's listings from eBay.

3 47. At least 140 of Plaintiff's eBay listings were removed by the  
4 aforementioned actions of Defendants between 2011 and 2013.

5 48. But for Defendants misrepresentations concerning alleged  
6 infringement in the Notices, eBay would not have removed the listings.

7 49. As a result of Defendants' actions, Plaintiff has expended time and  
8 resources, has lost sales, and is unable to continue to sell her products on eBay.  
9 Plaintiff has also suffered damage to her reputation as a top-rated seller on eBay.  
10 For example, and among other damages, the termination of Plaintiff's product  
11 listings damaged Plaintiff by causing eBay to issue "strikes" against Plaintiff's seller  
12 account, which caused eBay to place Plaintiff's product listings at the back of the  
13 search query list for Plaintiff's products, thereby making Plaintiff's products more  
14 difficult to find and resulting in damage to her reputation as a popular and trusted  
15 seller of skin care products. As a result of the terminated listings, Plaintiff  
16 expended time and resources to improve her online visibility and reputation and  
17 return her listings to the top of the search results.

18 50. On information and belief, in November of 2012, Defendants or their  
19 agent sent a complaint to Google's "Adwords" team containing allegations of sales  
20 of "counterfeit goods" by Plaintiff. Plaintiff never sold any "counterfeit goods" or  
21 otherwise violated Google's "Advertising Policy". Thus, the allegations of  
22 counterfeiting are false, and, on information and belief, Defendants knew they were  
23 false. Based on the complaint, Google notified Plaintiff that it would no longer  
24 display her advertisements because she had violated the company's "Advertising  
25 Policy". As a result of Defendants' false allegations, Plaintiff is still today unable to  
26 advertise using Google Adwords, which has resulted in lost sales and damage to  
27 Plaintiff's business.  
28

1           51. On information and belief, in 2013, Defendants or their agent sent at  
2 least one complaint to Plaintiff's web hosting provider, Serversea, which hosts  
3 Plaintiff's website at *www.numbcreams.com*. The complaint(s) alleged that Plaintiff  
4 had engaged in copyright and trademark infringement, and that Plaintiff had also  
5 engaged in "spamming". On information and belief, upon receiving the first  
6 complaint, a representative from ServerSea stated in an email to Plaintiff, "Your  
7 website is down due to TRADEMARK INFRINGEMENT and [sic]continues  
8 spamming. You are violating our terms of services and US law. We cannot restore  
9 your website until you contact our support team and provide them legal prove that  
10 you own the company that you claim and you'll never send spam again."

11           52. Upon receiving a second complaint, a representative from Seversea  
12 stated in an email to Plaintiff, "This is the second time we have [sic]receied abuse  
13 warning from internet authorities and now we will not let your account open with  
14 out[sic] your proper explanation on this." *Id.* Defendants' allegations in the  
15 complaint(s) to Serversea are false. Plaintiff never infringed any of Defendants'  
16 copyrights or trademarks, and Plaintiff never engaged in any "spamming".  
17 Eventually, Serversea restored Plaintiff's website; however, as a result of  
18 Defendants' false complaints, Plaintiff was forced to expend time and resources to  
19 seek restoration of the page through Serversea, and the page was inoperative for  
20 some time, which caused lost sales and other damages to Plaintiff.

21           53. Defendants continue to send communications containing false  
22 allegations of infringement to Plaintiff's third party Internet service providers, and  
23 Defendants' continued wrongdoing has caused, is causing, and will continue to  
24 cause irreparable harm to Plaintiff and her business.

25           Defendants' False and Disparaging Statements Published on the Internet

26           54. In addition to making false statements about Plaintiff directly to her  
27 service providers, on information and belief, Defendants published false and  
28

1 disparaging statements about Plaintiff's NUMBFAST®, SUPERNUMB, and  
2 DEEPNUMB products on the websites located at *www.numbfast.com*,  
3 *www.supernumb.com*, and *www.deepnumb.com*. These false and disparaging  
4 statements are widely published on the Internet and can easily be seen by Plaintiff's  
5 consumers.

6 55. Specifically, the website at *www.numbfast.com* states that "Numbfast  
7 is no longer available" and "Numbfast is now discontinued!". These statements are  
8 false because the product is not "discontinued" and Plaintiff continues to sell her  
9 federally-registered NUMBFAST® products across the United States.

10 56. The website at *www.supernumb.com* states that "SuperNumb is under  
11 an FDA recall order dated February 2, 2012 to stop the production and distribution  
12 of SuperNumb numbing cream"; that "SuperNumb, its directors and officers, are  
13 taking all steps to comply with the injunction"; and that "[Defendants] have very  
14 recently become aware of unauthorized resellers/advertisers on the internet  
15 purporting to use the SuperNumb name." These statements are completely false  
16 because no such "FDA recall" was ordered, and there was no such "injunction"  
17 issued by any court or U.S. government agency. Further, Plaintiff's sale of  
18 SUPERNUMB products is not "unauthorized", as Plaintiff is the owner of the  
19 SUPERNUMB trademark.

20 57. The website at *www.supernumb.com* states that "DeepNumb is under  
21 an FDA recall order dated February 18, 2012 to stop the production and distribution  
22 of DeepNumb numbing cream"; that "DeepNumb, its directors and officers, are  
23 taking all steps to comply with the injunction"; and that "[Defendants] have very  
24 recently become aware of unauthorized resellers/advertisers on the internet  
25 purporting to use the DeepNumb name." These statements are completely false  
26 because no such "FDA recall" was ordered, and there was no such "injunction"  
27 issued by any court or U.S. government agency. Further, Plaintiff's sale of  
28



1 DEEPNUMB products is not "unauthorized", as Plaintiff is the owner of the  
2 DEEPNUMB trademark.

3 58. Defendants made these statements intentionally, with knowledge  
4 and/or with reckless disregard as to the truth or falsity of the statements.  
5 Defendants' false and disparaging statements have resulted in injury to Plaintiff's  
6 business and reputation.

7 Defendants' Unlawful Registration of Domains Containing Plaintiff's Trademarks

8 59. On information and belief, Defendants have acquired and used the  
9 domain names *www.numbfast.com*, *www.supernumb.com*, and  
10 *www.deepnumb.com*, which are nearly identical to or confusingly similar to  
11 Plaintiff's federally-registered NUMBFAST® Mark and her common-law  
12 trademarks SUPERNUMB and DEEPNUMB. Defendants acquired and used the  
13 domains in bad faith to publish false and disparaging statements about Plaintiff's  
14 products and redirect Plaintiff's consumers to Defendant's website at  
15 *www.drnumb.com*. The Defendants' use of the domains to disparage Plaintiff's  
16 products and re-direct consumers has damaged Plaintiff's business and reputation.

17 60. Due to Defendants' continuing unlawful conduct, Plaintiff is now  
18 forced to bring this Complaint to protect her business and her valuable intellectual  
19 property rights. In filing this Complaint, Plaintiff was required to retain counsel  
20 and incur substantial fees and costs, and continues to incur fees and costs, to  
21 prosecute this lawsuit and pursue her claims.

22 **COUNT I – DECLARATORY RELIEF**

23 (Against all Defendants)

24 61. Plaintiff hereby incorporates by reference paragraphs 1 through 60,  
25 *supra*, as if fully set forth herein.  
26  
27  
28



1           62. Defendants contend that Plaintiff has infringed their alleged  
2 copyrights, trademarks, and that Plaintiff has engaged in spamming and the sale of  
3 illegal products.

4           63. Plaintiff contends that she has never infringed any of Defendants'  
5 alleged copyrights or trademarks, and in particular, her purchase and resale of DR.  
6 NUMB products in the U.S. is lawful under the first sale doctrine.

7           64. Defendants have threatened to take legal action against Plaintiff if she  
8 continues to sell her product, and Defendants have repeatedly requested removal of  
9 Plaintiff's eBay listings, her website, or otherwise complained to Plaintiff's third  
10 party Internet service providers about the alleged infringement.

11           65. Plaintiff continues to attempt to sell her products on the internet under  
12 threat of legal action by Defendants, and Defendants have already caused the  
13 removal of Plaintiff's eBay listings and caused Google to disallow Plaintiff from  
14 using the AdWords advertising program.

15           66. On information and belief, Defendants plan to continue to interfere  
16 with Plaintiff's business in the aforementioned manner for the indefinite future.

17           67. As a result of Defendants' actions, eBay suspended Plaintiff's seller  
18 accounts and has informed her that it will not reinstate them until eBay receives  
19 authorization from Defendants. Google has disallowed Plaintiff from using the  
20 AdWords program. Defendants have refused to authorize eBay to reinstate  
21 Plaintiff's accounts, and eBay will not do so without an order from this Court  
22 declaring that there is no infringement.

23           68. Plaintiff seeks to sell and advertise her products on eBay and  
24 elsewhere on the Internet, but as a result of Defendants' actions, is unable to do so.  
25 As a result, Plaintiff continues to lose profits and suffer damage to her business and  
26 reputation.

1           69. There is a real and actual controversy between Plaintiff and  
2 Defendants regarding whether the continued sale of her products is lawful or  
3 whether it infringes Defendants' rights, and whether Plaintiff has engaged in  
4 "spamming" or selling illegal products -- none of which Plaintiff has done.

5                   **COUNT II – MISREPRESENTATION OF COPYRIGHT**  
6                   **INFRINGEMENT**

7                   (Against all Defendants)

8           70. Plaintiff hereby incorporates by reference paragraphs 1 through 69,  
9 *supra*, as if fully set forth herein.

10          71. By submitting Notices of Claimed Infringement to eBay and other  
11 complaints to other Internet service providers, Defendants knowingly and  
12 materially misrepresented that Plaintiff's sale of skin care products infringed  
13 Defendants' alleged copyrights.

14          72. As a result of Defendants' acts alleged herein, Plaintiff has suffered, is  
15 suffering, and will continue to suffer substantial damage to her business in the form  
16 of lost profits and injury to goodwill and reputation.

17          73. As a result of Defendants' knowing material misrepresentations,  
18 Plaintiff is entitled pursuant to 17 U.S.C. § 512(f) to all damages, including costs  
19 and attorneys' fees, which she incurred as the result of eBay's reliance upon  
20 Defendants' misrepresentations.

21          74. Unless this Court restrains Defendants from further commission of the  
22 aforementioned acts, Plaintiff will suffer irreparable injury, for which she is without  
23 an adequate remedy at law. Accordingly, Plaintiff seeks an order enjoining  
24 Defendants from any sending any further wrongful notices, complaints, or threats in  
25 connection with the sale of Plaintiff's products on the internet.

**COUNT III – CANCELLATION OF FEDERAL TRADEMARK  
REGISTRATION (15 U.S.C. §§ 1064 AND 1119)**

(Against Defendant Shinsachi)

75. Count III is an action for cancellation of a federal trademark registration under arising under Section 14 of the Lanham Act, 15 U.S.C. §§ 1064 and 1119. Subject matter jurisdiction over this Count is based upon 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

76. Plaintiff hereby incorporates by reference paragraphs 1 through 75, *supra*, as if fully set forth herein.

77. Defendant Shinsachi applied for and obtained U.S. trademark registrations for the marks TATTOONUMB (Reg. No. 4290428), SUPERNUMB (Reg. No. 4321983), and DEEPNUMB (Reg. No. 4326072), described in this Complaint, *supra*.

78. Plaintiff has been and will continue to be damaged by Reg. Nos. 4290428, 4321983, and 4326072 and hereby prays for cancellation of the same. As grounds in support of her claim for cancellation, Plaintiff alleges as follows:

**Priority and Likelihood of Confusion**

79. Plaintiff has extensively used and promoted the marks TATTOONUMB, SUPERNUMB, and DEEPNUMB for topical anesthetics in interstate commerce, and thus owns valuable common-law trademark rights in the marks, with priority of use established as early as June 25, 2011, for TATTOONUMB; June 12, 2011, for SUPERNUMB; and June 16, 2011, for DEEPNUMB.

80. Shinsachi's application filing date of February 26, 2012 for the TATTOONUMB, SUPERNUMB, and DEEPNUMB trademark applications falls at least one (1) year and three (3) months after Plaintiff's first use of the same marks in June of 2011.

1           81. On information and belief, Shinsachi's claimed "first use" of the  
2 TATTOONUMB, SUPERNUMB, and DEEPNUMB marks on August 11, 2011,  
3 falls at least one (1) month after Plaintiff's first use of the same marks for topical  
4 anesthetics in June of 2011.

5           82. On information and belief, Shinsachi does not have any basis for  
6 claiming rights in the TATTOONUMB, SUPERNUMB, or DEEPNUMB marks  
7 prior to Shinsachi's application filing dates or claimed "first use" dates for the same  
8 marks.

9           83. On information and belief, Shinsachi does not have any basis for  
10 claiming rights in the TATTOONUMB, SUPERNUMB, or DEEPNUMB marks  
11 prior to Plaintiff's aforementioned first use dates for the same marks.

12           84. On information and belief, Plaintiff's first use of her NUMB Marks  
13 predates the earliest date on which Shinsachi may rely for its alleged use of the  
14 TATTOONUMB, SUPERNUMB, and DEEPNUMB marks for topical anesthetics.

15           85. Plaintiff has priority of use of her NUMB marks based on her earlier  
16 use in commerce.

17           86. Shinsachi's junior marks are identical to Plaintiff's senior NUMB  
18 Marks and are likely, when applied to Shinsachi's goods, to cause confusion,  
19 mistake or deception among consumers within the meaning of 15 U.S.C. § 1052(d).

20           87. Shinsachi's topical anesthetics are identical to and are advertised and  
21 directed at the same marketing and trade channels, and to the same consumers, as  
22 Plaintiff's topical anesthetics.

23           88. Shinsachi's junior marks so resemble Plaintiff's senior NUMB Marks,  
24 and the goods are so similar such that the public is likely to Shinsachi's junior  
25 marks as denoting an affiliation, connection, or association of Shinsachi with  
26 Plaintiff and as to the origin, sponsorship, and approval of Shinsachi's goods by  
27 Plaintiff, when that is not the case, thereby damaging Plaintiff.  
28



1 the common law trademark rights of Plaintiff in her own NUMB Marks for topical  
 2 anesthetics. In addition, Plaintiff has been damaged in that Defendants wrongfully  
 3 used the registrations to interfere with and damage Plaintiff's business by sending  
 4 false allegations of infringement of the registered marks to Plaintiff's third party  
 5 Internet service providers.

#### 6 **COUNT IV – FEDERAL CYBERPIRACY**

7 (Against all Defendants)

8 94. Count IV is an action for federal cyberpiracy arising under 15 U.S.C.  
 9 § 1125(d). Subject matter jurisdiction over this Count is based upon 15 U.S.C. §  
 10 1121 and 28 U.S.C. §§ 1331 and 1338(b).

11 95. Plaintiff hereby incorporates by reference paragraphs 1 through 94,  
 12 *supra*, as if fully set forth herein.

13 96. On information and belief, Defendants have acquired and used the  
 14 domain names *www.numbfast.com*, *www.supernumb.com*, and  
 15 *www.deepnumb.com*, which are nearly identical to or confusingly similar to  
 16 Plaintiff's federally-registered NUMBFAST® Mark and her common-law  
 17 trademarks SUPERNUMB and DEEPNUMB.

18 97. According to the domain name lookup service, *www.whois.com*, the  
 19 domain names *www.supernumb.com* and *www.deepnumb.com* are registered to  
 20 Defendant "ShinSachi Pharmaceutical Inc." The domain *www.numbfast.com* is  
 21 registered to "Domains By Proxy, LLC", which is a so-called "privacy service". On  
 22 information and belief, Defendants are the true owners and users of  
 23 *www.numbfast.com*, not Domains By Proxy, LLC. For example, the website  
 24 contains advertisements for Defendants' Dr. Numb products and website, which  
 25 shows that Defendants own or at least control the use of the *www.numbfast.com*  
 26 domain.  
 27  
 28

1           98. On information and belief, "Domains By Proxy, LLC" is a false and  
2 fictitious name which the Defendants listed as the registrant for the purpose of  
3 anonymously acquiring and using the domain with the bad faith intent to profit  
4 from the Plaintiff's mark NUMBFAST®. On information and belief, Defendants  
5 registered the domain using this false registrant information under the mistaken  
6 belief that, by using such false information, Defendants would not be discovered or  
7 held responsible for the unlawful use of the domain to unfairly trade on the  
8 goodwill of Plaintiff's mark by redirecting Plaintiff's customers to Defendants'  
9 website *www.drnumb.com*.

10           99. On information and belief, Defendants acquired and used, and  
11 continue to use the infringing domains *www.supernumb.com*, *www.deepnumb.com*,  
12 and *www.numbfast.com* with the bad faith intent to profit from Plaintiff's NUMB  
13 Marks. This bad faith intent is manifest from Defendants' numerous false and  
14 disparaging statements about Plaintiff's NUMB Marks appearing on the websites,  
15 coupled with advertisements of Defendants' own products and links to its own  
16 website *www.drnumb.com*—all designed to confuse, divert, and re-direct Plaintiff's  
17 consumers to Defendants' website. It is also manifest from the facts that, *inter alia*,  
18 (i) Defendants have no valid trademark or other intellectual property rights in  
19 SUPERNUMB, DEEPNUMB, and NUMBFAST®; (ii) the domain names are  
20 nearly identical to the Plaintiff's NUMB Marks; (iii) on information and belief,  
21 Defendants had actual or at least constructive knowledge of Plaintiff and her  
22 NUMB Marks prior to acquiring the domains; and (iv) Defendants provided the  
23 false and fictitious registrant name "Domains By Proxy, LLC" for  
24 *www.numbfast.com* in an attempt to conceal their identities under the mistaken  
25 belief that they would not be responsible for unlawful use of the domain if they  
26 provided such false registrant information.





1           108. Defendants' False Statements caused pecuniary harm to Plaintiff's  
2 business.

3                               **COUNT VI – INTENTIONAL INTERFERENCE WITH**  
4   **CONTRACT**

5   (Against all Defendants)

6           109. Plaintiff hereby incorporates by reference paragraphs 1 through 108,  
7 *supra*, as if fully set forth herein.

8           110. Plaintiff had a valid contract with eBay to sell products through the  
9 eBay website. Plaintiff also had valid contracts directly with eBay users who had  
10 agreed to purchase Plaintiff's products.

11           111. Plaintiff had valid contracts with other Internet service providers such  
12 as Google, Serversea, and Paypal.

13           112. Defendants knew about Plaintiff's contracts with eBay, eBay users,  
14 Google, Serversea, and Paypal.

15           113. Defendants intentionally submitted false Notices of Claimed  
16 Infringement to eBay and sent other complaints containing false allegations of  
17 infringement to Google, Serversea, and Paypal to disrupt Plaintiffs contracts. In the  
18 alternative, Defendant negligently submitted the false Notices of Claimed  
19 Infringement and other complaints.

20           114. Defendants' conduct caused eBay and Google to terminate their  
21 contracts with Plaintiff by suspending her accounts.

22           115. Defendants' conduct also caused eBay users who had agreed to buy her  
23 products to terminate their contracts with Plaintiff.

24           116. By reason of the foregoing, Plaintiff has been damaged in that  
25 Defendant's conduct has resulted in lost profits and other damages to Plaintiff, and  
26 Plaintiff will continue to be damaged unless Defendants are enjoined from  
27 continuing their wrongful conduct.  
28

117. Plaintiff will be irreparably injured by the continued acts of Defendants, until and unless such acts are enjoined. Plaintiff has no adequate remedy at law.

**COUNT VII – INTENTIONAL INTERFERENCE WITH  
PROSPECTIVE ECONOMIC ADVANTAGE**

(Against all Defendants)

118. Plaintiff hereby incorporates by reference paragraphs 1 through 117, *supra*, as if fully set forth herein.

119. Plaintiff had economic relationships with eBay, Google, Serversea, and Paypal, with the probability of future economic benefit to plaintiff.

120. Plaintiff also had economic relationships with potential purchasers of her products on eBay.

121. Defendants knew about Plaintiff's economic relationships with Google, Serversea, eBay, and potential purchasers of her products on eBay.

122. Defendants intentionally submitted false Notices of Claimed Infringement and sent other complaints containing false allegations of infringement to eBay, Google, Serversea, and Paypal to disrupt Plaintiff's future economic benefit by causing lost sales and other damages. In the alternative, Defendants negligently sent the false Notices of Claimed Infringement and other complaints containing false allegations of infringement.

123. Defendants' conduct was independently wrongful in that it constituted misrepresentation and improper business practices.

124. Defendants' conduct caused Plaintiff to lose future economic benefits by causing lost sales and other damages to Plaintiff, and will continue to be damaged unless Defendants are enjoined from continuing their wrongful conduct.



1 D. That Defendants be ordered to cease using the domains  
2 *www.numbfast.com*, *www.supernumb.com*, and *www.deepnumb.com*, and be  
3 ordered to transfer these domains to Plaintiff pursuant to 15 U.S.C. §  
4 1125(d)(1)(C);

5 E. That Defendants be ordered to cease using any other domain names,  
6 websites, or web pages that include references to the NUMB Marks, or any other  
7 trade name or trademark confusingly similar to the NUMB Marks, and be ordered  
8 to transfer the same to Plaintiff pursuant to 15 U.S.C. § 1125(d)(1)(C);

9 F. Damages according to proof;

10 G. That because of the willful nature of Defendants' acts, the Court enter a  
11 judgment for treble the amount of the aforesaid damages;

12 H. That because of the willful, intentional, and wrongful nature of  
13 Defendants' acts, the Court award to Plaintiff exemplary or punitive damages;

14 I. That the Court award Plaintiff pre-judgment interest;

15 J. That Defendant be required to pay to Plaintiff its costs in this action,  
16 including all costs and attorneys' fees; and

17 K. That Plaintiff be granted such other and further relief as the Court  
18 deems just and proper.

19  
20 Dated: March 10, 2014

PATEL & ALMEIDA, P.C.  
ALEX D. PATEL  
PAULO A. DE ALMEIDA

21  
22 By: /Alex D. Patel/  
23 ALEX D. PATEL

24 Attorneys for Plaintiff,  
25 OLGA CURTIS  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

Dated: March 10, 2014

PATEL & ALMEIDA, P.C.  
ALEX D. PATEL  
PAULO A. DE ALMEIDA

By: /Alex D. Patel/  
ALEX D. PATEL

Attorneys for Plaintiff,  
OLGA CURTIS